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3 UNITED STATES DISTRICT COURT

## 4 DISTRICT OF NEVADA

5 Case No. 3:25-cv-00184-MMD-CLB

6 NABOR REYES-RODRIGUEZ,

7 ORDER

8 Petitioner,

9 v.

10 TERRY ROYAL, *et al.*,

11 Respondents.

12 Following the Notice of Appearance (ECF No. 8) by the Federal Public Defender  
13 on behalf of Petitioner Nabor Reyes-Rodriguez, a pro se Nevada prisoner, Reyes-  
14 Rodriguez moves for leave to file his Amended Petition for Writ of Habeas Corpus (ECF  
15 No. 9 ("Amended Petition")) and for a scheduling order (ECF No. 10).

16 Reyes-Rodriguez tentatively calculated the federal statute of limitations under 28  
17 U.S.C. § 2244(d) and, because the limitations period may expire on or about June 24,  
18 2025, he requests leave to file his Amended Petition as a protective petition. Reyes-  
19 Rodriguez further requests issuance of a scheduling order that provides for the  
20 opportunity to file a second amended petition that reflects his counsel's thorough review,  
21 research, and investigation. The respondents do not oppose the motions. (ECF No. 11.)

22 The motions essentially seek to pursue a "two-step" procedure whereby Reyes-  
23 Rodriguez: (a) files an initial counseled amended petition preserving all then-known  
24 claims potentially free of possible relation-back or timing issues; and (b) thereafter  
25 potentially files a second amended petition after federal habeas counsel has had a full  
26 opportunity to independently investigate all potential claims. See, e.g., *McMahon v.*  
27 *Neven*, No. 2:14-cv-00076-APG-CWH, ECF No. 29 (D. Nev. May 29, 2014) (explaining  
28 the Court's rationale in allowing a bifurcated amendment procedure in habeas cases  
where the limitation period potentially may expire before federal habeas counsel would

1 be able to conduct a complete investigation); see also *Xiao Ye Bai v. Nevada*, 2021 WL  
2 246110, at \*1 (D. Nev. Jan. 25, 2021). The Court finds that Reyes-Rodriguez has shown  
3 good cause to utilize the two-step procedure and, therefore, grants his motions.  
4 Accordingly, it is hereby ordered:

- 5 1. Petitioner Nabor Reyes-Rodriguez's Motion for Leave to File Document (ECF No.  
6 9) is granted.
- 7 2. The Clerk of the Court is directed to file Reyes-Rodriguez's Amended Petition  
8 (ECF No. 9-1) and the attached Exhibits and Index of Exhibits (ECF Nos. 9-2, 9-3,  
9 9-4, 9-5, 9-6, 9-7, 9-8, 9-9) on the docket.
- 10 3. Reyes-Rodriguez's Motion for Scheduling Order (ECF No. 10) is granted.
- 11 4. The Federal Public Defender, through Jonathan M. Kirshbaum, Esq., is appointed  
12 as counsel for Petitioner under 18 U.S.C. § 3006A(a)(2)(B). Counsel will represent  
13 Petitioner in all federal proceedings related to this matter, including any appeals or  
14 certiorari proceedings, unless allowed to withdraw.
- 15 5. Petitioner will have until September 23, 2025 to file a second amended petition  
16 and/or seek other appropriate relief. This deadline and any extension thereof may  
17 not be construed as implied findings regarding the federal limitation period or a  
18 basis for tolling. Petitioner at all times remains responsible for calculating the  
19 running of the federal limitation period and timely asserting claims without regard  
20 to any court-ordered deadlines or extensions. Thus, a petition or amended petition  
21 filed within a court-ordered deadline may still be dismissed as untimely if it violates  
22 the statute of limitations. See *Sossa v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).
- 23 6. Respondents must file a response to the second amended petition, including,  
24 potentially by motion to dismiss, within 60 days of service of an second amended  
25 petition. Petitioner may file a reply within 30 days of service of the answer.  
26 However, Local Rule LR 7-2(b) governs the response and reply time to any motion  
27 filed by either party, including motions filed in lieu of a pleading.
- 28 7. Any procedural defenses Respondents raise to the counseled amended petition

1 must be raised together in a single, consolidated motion to dismiss. Successive  
2 motions to dismiss will not be entertained, and any procedural defenses omitted  
3 from the consolidated motion to dismiss will be waived. Respondents may not file  
4 a response that consolidates their procedural defenses, if any, with their response  
5 on the merits. But, arguments that an unexhausted claim clearly lacks merit may  
6 be included in a procedural-defense response. If Respondents seek dismissal of  
7 unexhausted claims under 28 U.S.C. § 2254(b)(2), they must: (1) do so in a single  
8 motion to dismiss, not in the answer; and (2) specifically direct their argument to  
9 the standard for dismissal under § 2254(b)(2) as set forth in *Cassett v. Stewart*,  
10 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including  
11 exhaustion, may be included with the merits in an answer. All procedural defenses,  
12 including exhaustion, must be raised in a single motion to dismiss.

- 13 8. In any answer filed on the merits, Respondents must specifically cite to and  
14 address the applicable state court written decision and state court record materials,  
15 if any, regarding each claim within the response as to that claim.
- 16 9. Respondents must file the state court exhibits relevant to their response in  
17 chronological order.
- 18 10. All state court records and related exhibits must be filed in accordance with LR IA  
19 10-3 and LR IC 2-2 and must include a separate index identifying each exhibit by  
20 number or letter. The index must be filed in CM/ECF's document upload screen as  
21 the base document to receive the base docket number (e.g., ECF No. 10). Each  
22 exhibit must then be filed as "attachments" to the base document to receive a  
23 sequenced sub-docket number (e.g., Exhibit A (ECF No. 10-1), Exhibit B (ECF No.  
24 10-2), Exhibit C (ECF No. 10-3)). If the exhibits will span more than one filing, the  
25 base document in each successive filing must be either a copy of the index or  
26 volume cover page. See LR IC 2-2(a)(3)(A).
- 27 11. Notwithstanding LR IC 2-2(g), paper copies of any electronically filed exhibits need  
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3 not be provided to chambers or to the staff attorney unless later directed by the  
4 Court.

5 DATED THIS 26<sup>th</sup> Day of June 2025.

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8 MIRANDA M. DU  
9 UNITED STATES DISTRICT JUDGE

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